

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

08 CIV 7051

THE NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS PENSION FUND, NEW YORK CITY
DISTRICT COUNCIL OF CARPENTERS WELFARE
FUND, NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS VACATION FUND, NEW YORK CITY
DISTRICT COUNCIL OF CARPENTERS ANNUITY
FUND, NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS APPRENTICESHIP, JOURNEYMAN
RETRAINING, EDUCATIONAL AND INDUSTRY
FUND, NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS CHARITY FUND, UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF AMERICA FUND and
THE NEW YORK CITY AND VICINITY CARPENTERS
LABOR-MANAGEMENT CORPORATION, by MICHAEL
J. FORDE, and PAUL O'BRIEN, as TRUSTEES, and
MICHAEL J. FORDE, as EXECUTIVE SECRETARY-
TREASURER, DISTRICT COUNCIL FOR NEW YORK
CITY AND VICINITY, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,

08 CV

JUDGE BAER

COMPLAINT

AUG 07 2008

Plaintiffs,

-against-

TOQUIR CONTRACTING, INC.,

Defendant.

-----X

Plaintiffs ("Benefit Funds"), by their attorneys O'Dwyer & Bernstein, LLP, for their
Complaint allege as follows:

NATURE OF THE CASE

1. This is an action to confirm and enforce an Arbitrator's Award rendered pursuant
to a collective bargaining agreement ("Agreement") between The District Council of New York
City and Vicinity of the United Brotherhood of Carpenters and Joiners of America ("Union") and
Toquir Contracting, Inc. ("Employer").

JURISDICTION

2. This Court has jurisdiction over this proceeding pursuant to section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185, sections 502(a)(3)(B)(ii), (d)(1), (e) and (g) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1132(a)(3)(B)(ii), (d)(1), (e) and (g), section 515 of ERISA, 29 U.S.C. §1145, and section 9 of the Federal Arbitration Act, 9 U.S.C. §9.

3. Personal jurisdiction is based upon Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2).

VENUE

4. Venue is proper in this district in that Plaintiffs' offices are located in this district.

PARTIES

5. At all times relevant herein the Plaintiffs were jointly administered, multi-employer, Taft-Hartley Benefit Funds administered by trustees designated by a union and by employers, established and maintained pursuant to section 302(c)(5) of the LMRA, 29 U.S.C. §186(c)(5). Plaintiffs Forde and O'Brien are fiduciaries of the Benefit Funds within the meaning of ERISA sections 3(21) and 502, 29 U.S.C. §§1002(21) and 1132.

6. The Benefit Funds are employee benefit plans within the meaning of sections 3(1) and (3) of ERISA, 29 U.S.C. §1002(1) and (3) and are maintained for the purposes of providing health, medical and related welfare benefits, pension and other benefits to eligible participants and beneficiaries on whose behalf they receive contributions from numerous employers pursuant to collective bargaining agreements between the employers and the Union.

7. Upon information and belief defendant is a domestic corporation incorporated under laws of the State of New York with a principal place of business located at 31-16 30th

Avenue, Suite 204, Astoria, NY 11102.

8. The defendant is an employer within the meaning of section 3(5) of ERISA, 29 U.S.C. §1002 (5).

FIRST CLAIM FOR RELIEF

9. Defendant was bound at all relevant times by a collective bargaining agreement with the Union, which, by its terms, became effective June 13, 2007. Said Agreement provides, inter alia, that the defendant shall furnish its books and payroll records when requested by the Benefit Funds for the purpose of conducting an audit to ensure compliance with required benefit fund contributions and for the submission of disputes to final, binding arbitration.

10. A dispute arose during the period of the Agreement between the parties when the Employer failed to comply with the Benefit Funds' demands to furnish its books and records for the purpose of conducting an audit.

11. Pursuant to the arbitration clause in the Agreement, the dispute was submitted to arbitration to Robert Herzog, the duly designated impartial arbitrator.

12. Thereafter, upon due notice to all parties, the arbitrator duly held a hearing and rendered his award, in writing, dated May 12, 2008 determining said dispute. Upon information and belief, a copy of the award was delivered to the defendant (A copy of the award is annexed hereto as Exhibit "A" and made part hereof).

13. The arbitrator found that defendant had failed to comply with the Agreement as it relates to paying fringe benefit monies and directed it to furnish the Plaintiffs with any and all books and records, for the period of August 2, 2007 through May 12, 2008 including but not limited to, the cash disbursement section of the cash book, general ledger, job location records, daily time records and all certified payrolls.

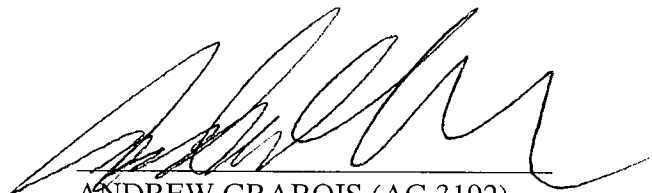
14. The arbitrator also found that defendant was required to pay the funds a sum of \$2,350.00 pursuant to the Agreement, representing costs incurred in the arbitration.

15. The defendant has failed to abide by the award.

WHEREFORE, Plaintiffs demand judgment against defendant as follows:

1. For an order confirming the arbitration award in all respects;
2. For entry of judgment in favor of the Plaintiffs ordering defendant and its officers to make available to the Plaintiffs or authorized representatives any and all books and records deemed necessary to conduct an audit including, but not limited to, the cash disbursement section of the cash book, general ledger, job location records, daily time records and all certified payrolls for the period August 2, 2007 through May 12, 2008;
3. For entry of judgment in favor of the Benefit Funds and against Toquir Contracting, Inc. ordering defendant to pay the Benefit Funds a total sum of \$2,350.00 with interest to accrue at the rate of 10% from the date of the award, pursuant to the arbitrator's award;
4. For attorneys' fees and costs of this action;
5. For such other and further relief as this court may deem just and proper.

Dated: New York, New York
August 7, 2008



ANDREW GRABOIS (AG 3192)
O'Dwyer & Bernstein, LLP
Attorneys for Plaintiffs
52 Duane Street
New York, NY 10007
(212) 571-7100

EXHIBIT A

ORIGINAL

OFFICE OF THE IMPARTIAL ARBITRATOR

-----X
In The Matter Of The Arbitration

between

New York City District Council of Carpenters
Pension Fund, New York City District Council of
Carpenters Welfare Fund, New York City
District Council of Carpenters Vacation Fund,
New York City District Council of Carpenters
Annuity Fund, New York City District Council
of Carpenters Apprenticeship, Journeyman
Retraining, Educational and Industry Fund,
New York City District Council of Carpenters
Charity Fund, United Brotherhood of Carpenters
and Joiners of America Fund and The New York
City and Vicinity Carpenters Labor-Management
Corporation, by Michael J. Forde and Paul
O'Brien, as Trústees

DEFAULT

AWARD

And

Michael J. Forde, as Executive Secretary-
Treasurer, District Council for New York City
and Vicinity, United Brotherhood of Carpenters
and Joiners of America

(Petitioners)

-and-

Toquir Contracting Inc.

(Employer)

-----X
BEFORE: Robert Herzog, Esq.

Toquir Contracting Inc. (hereinafter referred to as the
"Employer") signed a "Sub-Contractor Affidavit of Project Labor
Agreement Solicitation No: SCA06-07670D-2." The form, dated June
13, 2007, pertains to New York City Public School 181 in the Bronx
and contains the following language: **"Toquir Contracting Inc. ... shall be bound by
the provisions of the Project Labor Agreement {between the New York City School Construction**

Authority and Building and Construction Trades Council of Greater New York and Vicinity} executed on the 10th of November, 2004 with respect to all Work to be performed under this solicitation." The referenced Project Labor Agreement, in turn, states in Article 11, Section B:

The Contractor {Toquir Contracting Inc.} agrees to be bound by the written terms of the legally-established jointly trustee Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds but only with regard to Program Work done under this Agreement and only for those employees to whom this Agreement requires such benefit payments.

The Funds identified in the caption above are such Trust Funds encompassed by Article 11, Section B.

Trust documents and Collective Bargaining Agreements that are incorporated by reference by the Trust documents provide for arbitration of disputes before the undersigned Arbitrator as Impartial Arbitrator, and in which the Employer has therein agreed, for the duration of the work covered by the above-identified affidavit, to pay contributions toward employee benefit funds (hereinafter collectively referred to as the "Funds"). The Funds, as beneficiary of the Trust documents and incorporated by reference documents, have standing before the Arbitrator. In accordance therewith, the Funds, by an April 18, 2008 Notice of Intention to Arbitrate, demanded arbitration. The Funds alleged the Employer failed to permit the Funds to conduct an audit of its books and records for the period of August 2, 2007 through to date to determine whether it is in compliance with its obligation to contribute to the Funds. A Notice of Hearing dated April 18, 2008

advised the Employer and the Funds that the arbitration hearing was scheduled for April 29, 2008.

The Notice of Hearing was sent to the Employer. The regular mail copy of the Notice of Hearing was not returned to sender and deemed delivered to the Employer. The Employer is deemed to have received the Notice of Hearing based on the delivery of the regular mail copy.

On April 29, 2008, at the place and time designated by the aforesaid Notice of Hearing, Steven Kasarda, Esq. appeared on behalf of the Funds. Despite the Employer having been sent notice of the proceeding and the claim against it, no appearance on its behalf was made. Also, no written, mutually agreed upon waiver by the parties to adjourn the proceeding was presented. The arbitration proceeded as a Default Hearing. Full opportunity was afforded the party present to be heard, to offer evidence, and to examine witnesses. The Funds thereupon presented their proofs to the Arbitrator.

The uncontroverted testimony and evidence established that:

- During the August 2, 2007 to date period, the Employer was bound to Fringe Benefit Trust Funds documents.
- The Fringe Benefit Trust Funds documents obligated the Employer to make certain payments to the Fringe Benefit Trust Funds on behalf of all its carpenter employees pursuant to schedules.

- Fringe Benefit Trust Fund documents authorized the Funds to conduct an audit of the Employer's books and records in order to verify that all the required contributions were made to each of the aforesaid Fringe Benefit Trust Funds maintained by the Funds.
- In accordance with this auditing provision, an accountant, employed by the Funds, sought to conduct an audit of the Employer's books and records. In violation of this auditing provision, the Employer did not consent to an audit of the Employer's books and records.

AWARD

Based upon the substantial and credible evidence of the case as a whole:


1. Toquir Contracting Inc. is in violation of the Sub-Contractor Affidavit of Project Labor Agreement to which it is the signatory, the Project Labor Agreement, and the Fringe Benefit Trust Fund documents;
2. Toquir Contracting Inc. is ordered to permit and facilitate the Funds conducting an audit of its books and records pertaining to any and all work it performed pursuant to the Sub-Contractor Affidavit of Project Labor Agreement and incorporated by reference documents for the period of August 2, 2007 through to

date to determine whether it is in compliance with its obligations to contribute to the Funds;

3. Toquir Contracting Inc. shall pay to the Funds forthwith the Funds' counsel's fees, the undersigned Arbitrator's fee, and all associated court costs in the following amounts:

Court Costs	\$ 350.00
Attorney's Fee	1,500.00
Arbitrator's Fee	<u>500.00</u>
TOTAL	\$2,350.00

4. Toquir Contracting Inc. shall pay to the District Council Carpenters Benefit Funds the aggregate amount of two thousand three hundred fifty dollars (\$2,350.00) with interest to accrue at the rate of 10% from the date of this Award.


Robert Herzog
Arbitrator

Dated: May 12, 2008

State of New York)
County of Rockland)

I, Robert Herzog, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.


Robert Herzog
Arbitrator

Dated: May 12, 2008

To: Toquir Contracting Inc.
Attn: Mr. Toquir Malik, President
31-16 30th Avenue, Suite 204
Astoria, New York 11102

Steven Kasarda, Esq.
NYC District Council
Carpenters Benefit Funds
395 Hudson Street
New York, New York 10014